

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-051302

02/07/2012

HONORABLE GERALD PORTER

CLERK OF THE COURT

T. Ross

Deputy

IN RE THE MATTER OF
MATTHEW J WEISSNER

MATTHEW J WEISSNER
UP

AND

TASHA J WEISSNER

TASHA J WEISSNER
10423 W TRUMBULL RD
TOLLESON AZ 85353

REBECCA WATSON
PO BOX 674
GILBERT AZ 85299
FAMILY COURT SERVICES-CCC

UNDER ADVISEMENT RULING

The Evidentiary Hearing in this matter was conducted on February 3, 2012. During the proceedings, the Court heard from the parties. The Court has since considered the evidence, including the demeanor of the parties, reviewed the exhibits admitted of record as well as the case history, and considered the parties' arguments. The Court now finds as follows:

The parties were divorced on May 18, 2009 and have one child, Mycah J. Weissner, born August 23, 2005. Father has sole custody since the divorce, and until November 29, 2010, Mother has had only supervised visitation.

Mother filed a Petition to Modify Child Custody, Parenting Time and Child Support on March 14, 2011 and a Motion for Custody Change to Mother's Sole Custody and Emergency Temporary Restraining Order and Injunctive Relief filed on February 28, 2011.

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CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that the parties have one minor child in common. Father and the minor child have resided continuously in Arizona since his birth. Further, this Court issued the initial custody order on May 18, 2009 and therefore, this Court finds that Arizona is the “home state” of the minor child. *See* A.R.S. § 25-1032.

Best Interest Findings: A.R.S. § 25-403

The Court has considered the factors under A.R.S. § 25-403. The parties have reached no agreements on Custody and Parenting.

LEGAL CUSTODY

In deciding whether to order sole or joint custody and who should have final decision making authority for Mycah concerning health, education, religion and other life decisions, the court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The Court has considered the factors as set out in A.R.S. 25-403(A) (copied below) and finds as follows:

1. The wishes of the child's parent or parents as to custody. **The Court finds that the parties are not in agreement on custody. Father desires sole custody. Mother desires sole custody.**
2. The wishes of the child as to the custodian. **The child is six years of age and too young to express an opinion.**
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest. **The Court finds that the child relates well to Mom, Dad and their families. The Court notes that Mycah has developmental disabilities including expressive language disorder and sensory integrative disorder. Mycah interacts well with his half-brother Dean and with both parents. Mother has had supervised visitation since 2009. Until last year, Mother exercised parenting inconsistently. Beginning last summer, Mother obtained additional supervised parenting time. In November 2011, Mother obtained unsupervised parenting time. Mother has had consistent visitation since the summer of 2011.**

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4. The child's adjustment to home, school and community. **The Court finds that Mycah is doing reasonably well in school; in fact, he excels in some areas. Nevertheless, school officials report some behavioral issues. Father contends that the issues arose after Mother received unsupervised parenting time. The school records do not support that position.**

5. The mental and physical health of all individuals involved. **The Court finds that Father is very involved with the necessary care for Mycah's special needs. The Court also finds that Mother has not taken an active role in dealing with Mycah's special needs. Mother and Father are both healthy mentally and physically.**

6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse. **Father was awarded sole custody of Mycah in 2009. Mother contends Father has not permitted her to have an active role in Mycah's life. The Court finds that Mother has not taken advantage of the parenting time given to her in the past. Father has reasonable concerns about Mother having significant contact with the child given prior history. This Court finds that both parents will allow frequent and meaningful contact for the child with the other parent if ordered.**

7. Whether one parent, both parents or neither parent has provided primary care of the child. **The Court finds that Father has been the primary care provider for Mycah. Mother has at times absented herself from Mycah's life. In the past six months, Mother has re-engaged with Mycah and has exercised all of her allowed parenting time.**

8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody. **The Court finds that there are no agreements prior to trial.**

9. Whether a parent has complied with chapter 3, article 5 of this title. **The Court finds this has been satisfied by both parents.**

10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02. **The Court finds that there are no allegations of false reporting of child abuse or neglect.**

11. Whether there has been domestic violence or child abuse as defined in section 25-403.03. **The Court finds that there are no allegations of domestic violence.**

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In deciding whether one party should have final decision making authority, the Court has also considered the factors as set out in A.R.S. 25-403.01(A) and (B) (copied below) as well as 25-403.03 and finds as follows:

A. In awarding child custody, the court may order sole custody or joint custody. This section does not create a presumption in favor of one custody arrangement over another. The court in determining custody shall not prefer a parent as custodian because of that parent's sex.

B. The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests. In determining whether joint custody is in the child's best interests, the court shall consider the factors prescribed in section 25-403, subsection A and all of the following:

1. The agreement or lack of an agreement by the parents regarding joint custody. **The Court finds that there is no agreement to share custody and decision making authority.**

2. Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child. **The Court finds that both parties' lack of agreement on whether custody and decision making authority should be shared is not unreasonable on Father's part, given the prior history of the parties. The Court does find that Mother's request for sole custody is unreasonable given that Father has been the primary care parent for Mycah and done a very good job as the primary care parent.**

3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody. **The Court finds that the parties have not always communicated well but that recently communication between the parties has been mainly appropriate in accordance with the court appointed advisor's testimony who has monitored the communication.**

4. Whether the joint custody arrangement is logistically possible. **The Court finds that joint custody is logistically possible given that both parents reside locally in relatively close proximity to one another.**

Finally, as to whether there has been significant domestic violence, A.R.S. §25-403.03(A), **the Court finds that there is no reported domestic violence to consider.**

Having considered the factors as set out above and after review of the case history, in particular the A.R.S. 25-403 findings made by Judge Hilliard in 2009 and the recommendations from the child welfare specialist, and after consideration of the testimony at trial, the Court finds that it is in the best interest of the child for both parents to have joint custody except that Father,

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shall have final decision making authority for all life decisions for Mycah after reasonable consultation with Mother and thoughtful consideration of Mother's positions. The Court further finds that joint custody is feasible and can be maintained through an appropriate Court order concerning communication.

CUSTODY TERMS

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel. In accordance with this order, Father shall have final decision making authority for all aspects of Mycah's education.

Medical And Dental Arrangements- Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall notify the other parent immediately of any emergency medical/dental care sought for the child. Both parties shall cooperate on health matters pertaining to Mycah and shall keep one another reasonably informed regarding the status of Mycah's health. In accordance with this Order, Father shall have final decision making for all of Mycah's medical needs after appropriate consultation with Mother. Father shall keep Mother informed as to names, addresses, and telephone numbers of all medical/dental care practitioners and all doctor's appointments.

Parental Communication- It is in the furtherance of each child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. The parents shall develop their communication by utilizing e-mail as their ONLY method for communication in accordance with this Order. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and

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sent so that if an issue arises in the future that has been addressed through e-mail; each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the children outside of the state of California or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Decision Making Authority- It is anticipated that parental decisions shall be required for major issues in raising the children and in meeting on-going needs. If/when they arise; the parents shall address the issues. Each shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. Both parties shall make all reasonable efforts to arrive at a joint decision. Pursuant to this order, Father will have final decision making authority for all aspects of Mycah's life.

PARENTING TIME

Holiday parenting time takes priority over both normal parenting time and summer parenting time.

Summer parenting times takes priority over normal parenting time.

NORMAL PARENTING TIME:

Mother shall have parenting time with Mycah every Wednesday from 3:30 p.m. and until 7:00 p.m. commencing February 8, 2012.

Mother shall have parenting time with Mycah every other weekend from 3:30 p.m. on Friday to Sunday 6:00 p.m. commencing February 10, 2012.

HOLIDAY TIME:

Father's Holidays in Even-Numbered Years
Mother's Holidays in Odd-Numbered Years

Martin Luther King Day Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

Easter Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

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Spring Break----Begins at 3:30 p.m. on Friday after school let's out through the following week and weekend until 6:00 p.m. on Sunday the day prior to school commencing.

Labor Day Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

Veteran's Day----From 9:00 a.m. to 6:00 p.m. PLUS the weekend if Veteran's Day is Friday or Monday.

Christmas----Begins at 7:00 p.m. on December 24th until 7:00 p.m. on Christmas day.

Father's Holidays in Odd-Numbered Years
Mother's Holidays in Even-Numbered Years

President's Day Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

Memorial Day Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

4th of July----From July 4th at 9:00 a.m. to July 5th at 9:00 a.m. PLUS the weekend if July 4 is Friday or Monday.

Columbus Day Weekend----From Friday at 3:30 p.m. to Monday at 6:00 p.m.

Thanksgiving Holiday----From Thursday at 9:00 a.m. to Sunday at 6:00 p.m.

Christmas Eve---Begins at 9:00 a.m. until 7:00 p.m.

Father's/Mother's Day. The child shall be with Father on Father's Day and with Mother on Mother's Day from 9:00 a.m. until 6:00 p.m.

SUMMER TIME:

Each parent shall be entitled to two weeks of continuous uninterrupted parenting time during the summer. The parents shall arrange their summer parenting time by giving notice to one another at least 45 days prior to the last day of school but not sooner than 60 days prior to the last day of school. In the event of a conflict, Mother's choice of summer parenting time shall have priority in even years and Father's choice of summer parenting time shall have priority in odd years. Summer begins the day after school lets out until the day prior to school commencing.

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For all parenting time, the receiving party shall provide transportation. Mother's parenting time is set at 3:30 but may change when school is in session to coincide with the release time from school.

CHILD SUPPORT

THE COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support as detailed in the Child Support Worksheet filed herewith.

IT IS THEREFORE ORDERED that Mother shall pay to Father as and for child support the sum of \$ 242.92 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing December 1, 2011 by Wage Assignment.

IT IS FURTHER ORDERED that Mother shall pay an additional \$50.00 per month for arrears on child support through the Support Payment Clearinghouse on the 1st day of each month commencing December 1, 2011 by Wage Assignment.

LET THE RECORD REFLECT that an Electronic Order of Assignment is issued.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Mother shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Order of Assignment issued this date. Mother is advised that until such time as the Order of Assignment becomes effective, Mother has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

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Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

OTHER ORDERS

The parties shall write (e-mail only) one another concerning all matters for Mycah that require a decision from the other parent or to express a concern or preference concerning the child including requests for reimbursement for out-of-pocket expenses in accordance with this Order. Any future dispute concerning decision making for the child will be evaluated based on the written record to determine the reasonableness of the parties. All such communication shall be civil and not threatening.

The parties may contact Mycah by telephone when in the care of the other parent to speak to the child. The parties are limited to one call a day at 7:00 p.m. Only communication between the parties necessary to facilitate the call is permitted. Neither parent shall in anyway unreasonably restrict the child from calling the other parent during the hours of 7:30 a.m. to 7:30 p.m. Each parent shall honor Mycah's privacy when that child is speaking with the other parent.

Both parties are advised that they shall not speak negatively of the other parent to the child or to others when in the presence of the child and shall promote and acknowledge the other parent to the child. Both parties are responsible to insure that invited guests, family members and others with whom they associate, do not speak negatively of the other parent. Violations of this provision will result in a substantial change to the parenting time order.

Based on the current child support calculation, the parties shall split all unreimbursed medical, dental and vision costs as well as the cost of any activities for the child or extraordinary expenses as follows: Mother 33% and Father 67%.

Father shall maintain medical, dental and vision insurance on Mycah and shall provide updated insurance cards and information to Mother as they are received. From the date of this Order, out of network expense associated with medical, dental or vision shall be allowed only if:

1. The medical exigencies of the situation only permit out-of-network care;
2. There is a written referral from the primary in-network treating physician; or
3. Written (e-mail) agreement of the Mother and Father.

The parties are advised that all expenses associated with tutoring, summer camp, extra curricular activities and other activity expenses at school or otherwise or for reimbursement of

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out-of-pocket expenses associated with medical, dental and vision shall be handled as outlined below. Neither parent shall unreasonably deny consent or payment for such activity. Absent consent, either parent may enroll and pay for such activity and shall seek reimbursement as outlined below.

The Procedure for Reimbursement from the other parent shall be handled as follows:

1. Reimbursement shall be by calendar quarter (January 1, to March 30 as example);
2. All receipts in the quarter shall be maintained during the quarter and then bundled and sent at the same time not later than 45 days following the end of the quarter;
3. All receipts for the quarter shall be either scanned and electronically sent or sent with an itemized list of each reimbursement request via certified mail, return receipt requested ;
4. The receiving party shall have 30 days from receipt of the request for reimbursement to object in writing (e-mail only) and shall pay the remaining undisputed portion within 10 days thereafter by check through certified mail, return receipt requested.
5. The submitting party shall raise any refusal to pay for reasonable expenses in accordance with this Order within 45 days of receiving an objection to the requested reimbursement.
6. Failure to comply with these provisions may result in denial of reimbursement or sanctions for failure to timely reimburse under A.R.S. 12-349.

Both parents shall cooperate with one another in finding an appropriate mental health provider for Mycah to address the concerns raised by educators in letters to the court.

Mother shall scan and send by e-mail to Father her most recent wage statement not later than February 13, 2012. Mother has been attributed \$26,000 annually.

Father shall scan and send to Mother a copy of the 2011 child care receipt(s) showing the amount paid from April to December of 2011. Father has been given credit for \$2500 in calculating child support.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

FILED: Exhibit Worksheet

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/ s / HONORABLE GERALD PORTER

JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.